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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ARKANSAS LOUISIANA GAS COMPANY,
A DIVISION OF ARKLA, INC.,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, et al
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1983

No. 83-1548

ARKANSAS LOUISIANA GAS COMPANY,
A DIVISION OF ARKLA, INC.,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent

CITY OF WINFIELD, KANSAS,
Intervenor

[Filed Jun. 14, 1984]

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Before: MIKVA and BORK, *Circuit Judges*, and BAZELON, *Senior Circuit Judge.*

JUDGMENT

This cause came on to be heard on a petition for review of orders issued by the Federal Energy Regulatory Commission, and was briefed and argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c). For the reasons stated in the accompanuy memorandum, it is

ORDERED and ADJUDGED, by this Court, that the orders under review are affirmed and the petition for review is denied. It is

FURTHER ORDERED, by this Court, *sua sponte*, that the Clerk shall withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* Local Rule 14, as amended on November 30, 1981 and June 15, 1982. This instruction to the Clerk is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

Per Curiam
For The Court

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Per Curiam: Petitioner, the Arkansas Louisiana Gas Company, seeks review of orders of the Federal Energy Regulatory Commission (FERC or Commission) which require petitioner to refund excess rate charges to its customers. FERC's orders were based on the decision of an Administrative Law Judge (ALJ) which was made after a full hearing on the matters in issue. We uphold FERC in all respects.

Petitioner's main complaint is that FERC imposed an improper retroactive refund liability by using the rate set in a 1977 filing as the floor on petitioner's refund liability, rather than using that rate as adjusted by several other subsequent filings. Under streamlined procedures authorized by Commission regulation, a pipeline such as petitiioner may adjust its rates every six months by making a limited filing with FERC which reflects only changes in the pipeline's cost of purchased gas. The regulation which allows these Purchased Gas Adjustment filings (the PGA clause) requires as a quid pro quo a filing at least once every three years in which the pipeline provides a full cost-of-service study. Pursuant to Section 4(e) of the Natural Gas Act, 15 U.S.C. § 717c(e) (1982), FERC at the time of Arkla's triennial filing in 1980 suspended the rate increase for five months and then allowed it to go into effect subject to refund pending the outcome of a full hearing. At this hearing, FERC found the 1980 rates unreasonable and ordered a refund; that refund took as its baseline the 1977 rates rather than those rates as adjusted by the subsequent PGA filings.

We can find no fault with FERC's interpretation and application of the PGA clause to the facts at hand. The interim streamlined filings by petitioner do not establish a new base rate below which refunds may not be ordered, for those rates are not subject to full FERC review until the triennial filing. Accordingly, it was proper for FERC to go back to the earlier 1977 base rate in fixing the floor

on petitioner's refund liabilities. Petitioner seems to be arguing that the increased cost of purchased gas during the interim periods must be taken as a "given" so that the rate after the most recent PGA establishes an absolute floor below which FERC may not order a refund. However given these purchased gas costs might be, FERC in promulgating the PGA clause did not give up its authority to review the entire rate structure of a pipeline every three years. While the cost of purchased gas may have gone up, other costs may have gone down. In any event, it is for FERC to set the rates; the only limitation on the size of an ordered refund is the requirement that it not lead to a rate lower than the last rate that FERC has fully approved—in this case the rate set in 1977.

Petitioner also complains that FERC failed to adjust petitioner's rate of return on equity to a level higher than was set in the 1977 decision. It is beyond challenge that a strong presumption of validity "attaches to each exercise of the Commission's expertise, and those who would overturn the Commission's judgment undertake" a heavy burden. *Permian Basis Area Rate Cases*, 390 U.S. 747, 767 (1968). At the Commission level, the burden for seeking a change from the earlier approved rate of return on equity was also petitioner's. Petitioner tried to meet this burden by introducing earnings figures of 14 other pipelines. FERC properly refused to credit this evidence because the figures represented a mix of business and risks that made any comparison misleading. FERC's refusal to credit virtually identical evidence was upheld by the Fifth Circuit in an earlier review sought by petitioner, *Arkansas Louisiana Gas Co. v. FERC*, 654 F.2d 435 (5th Cir. 1981). Moreover, petitioner's attempt to respond to the Fifth Circuit's decision by submitting further comparative earnings studies was infected with the same flaw: the comparisons were with businesses insufficiently similar to that of petitioner. The Commis-

sion was therefore correct to find that petitioner had not met its burden of justifying a higher rate of return on equity than that set by FERC's order.

Petitioner also challenges FERC's exclusion of undistributed subsidiary earnings from the rate base and simultaneous inclusion of the subsidiaries' debt. These determinations, originally made by the ALJ and affirmed by FERC, are in keeping with accepted Commission policy and logic. Petitioner offers no reasons why these routine allocations were not proper in this case. Moreover, it is to FERC that Congress delegated the responsibility for developing procedures to resolve these complex issues of return on equity and appropriate capital structure. Decisions by FERC in these areas are entitled to special deference by a reviewing court.

Petitioner next complains that FERC excluded from the rate base any allocation of assets attributable to a new facility known as Chiles Domes. Only facilities that are "used and useful" are included in a company's rate base. Petitioner claimed that its Chile Domes facility should have been included because some gas had been injected by the relevant date, thus making the facility "used and useful." FERC determined that the only gas inserted into the facility by the appropriate date was "cushion gas", which is gas not available for sale to customers. Until "storage gas" was injected into the facility, the facility was not, according to FERC, available for its intended purpose. The expertise of FERC as to when a facility becomes useful, when dependent on such technical determination as the allocation of gas into "cushion gas" and "storage gas," should not be tampered with on judicial review.

Finally, petitioner contends that FERC improperly deducted funds from the rate base which reflected deferred taxes for years prior to 1975. Petitioner uses tax normalization, which allows a utility to obtain more from

ratepayers to meet tax liabilities in a given year than is actually paid in taxes for that year. FERC required petitioner to account for this difference so that the balance sheet did not reflect any distortion caused by the mismatch between taxes collected and taxes paid. FERC was correct in requiring the adjustment necessary to account for what is essentially a deferred tax liability.

The orders of the Commission are affirmed and the petition for review is denied.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1983

No. 83-1548

ARKANSAS LOUISIANA GAS COMPANY,
A DIVISION OF ARKLA, INC.,
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent

CITY OF WINFIELD, KANSAS,
Intervenor

[Filed Aug. 8, 1984]

Before: MIKVA and BORK, *Circuit Judges*, and BAZELON, *Senior Circuit Judge*

ORDER

On consideration of Petitioner's Petition for Rehearing, it is

ORDERED by the Court that the aforesaid Petition is denied.

Per Curiam
For the Court:

GEORGE A. FISHER
Clerk

By: /s/ Robert A. Bonner
ROBERT A. BONNER
Chief Deputy Clerk

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos. RP80-91-000
and RP80-93-000

ARKANSAS-LOUISIANA GAS COMPANY

OPINION NO. 160

OPINION AND ORDER ESTABLISHING
JUST AND REASONABLE RATES

Issued February 4, 1983 DC-B-43

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos. RP80-91-000
and RP80-93-000

OPINION NO. 160

APPEARANCES

Sherman S. Poland, Gilbert L. Hetherwick and *Jacob Goldberg* for Arkansas Louisiana Gas Company

James Leithhead, Alfred O. Holl and *Hervey M. Cody* for Cities Service Gas Company

Stanley W. Balis and *William T. Miller* for the Cities of Winfield, Kansas and Mangum, Oklahoma

Jay M. Galt for the City of Mangum, Oklahoma

Richard Bonnifield for the Staff of the Federal Energy Regulatory Commission

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: C. M. Butler III, Chairman; J. David Hughes, A. G. Sousa and Oliver G. Richard III.

Docket Nos. RP80-91-000
and RP80-93-000

ARKANSAS-LOUISIANA GAS COMPANY

OPINION NO. 160

OPINION AND ORDER ESTABLISHING JUST AND REASONABLE RATES

(Issued February 4, 1983)

This proceeding concerns the Arkansas-Louisiana Gas Company's request, pursuant to section 4 of the Natural Gas Act (NGA), 15 U.S.C. § 717c, for an increase in its rates for sales of gas within the Commission's jurisdiction to certain customers. The proposed rates, after being suspended for five months, were in effect, subject to refund, from November 1, 1980, until June 1, 1982.[1] The Company's request, if approved without modification, is for an annual increase in rates of roughly $4 million. The Company's sales which are subject to the Commission's jurisdiction are to Cities Service Gas Company and to certain small towns in Kansas and Oklahoma.

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[1] The Company's filings in the instant proceeding were accepted by the Commission on May 30, 1980, 11 FERC ¶ 61,213. The Commission accepted on May 26, 1982, 19 FERC ¶ 61,194, subsequent rate filings, with the rates effective subject to refund on June 1, 1982.

Following hearings, the presiding administrative law judge issued an initial decision which disposed of a number of issues raised by the Company's request, and determined just and reasonable rates.[2] The Company (also referred to herein as Arkla) filed exceptions to various parts of the initial decision. The Commission staff and the City of Winfield, Kansas, filed briefs opposing the Company's exceptions.

We have reviewed the initial decision, the briefs on exceptions, and the record in this proceedng. On the basis of our review, we conclude that the exceptions raise no issues which are not adequately discussed and disposed of in the initial decision, except as to one matter. On that issue, the appropriate data to be relied on in considering a rate increase application, we have amplified the initial decision. We therefore affirm and adopt the initial decision, as modified herein.

The Test Year Data

Under the NGA regulations, a pipeline seeking a rate increase is required to file data consisting of exhibits and testimony in support of its request. The purpose of the data is to sustain the burden of proof which is on the Company to establish that its proposed rates are just and reasonable.

Section 154.63(e)(2) of the regulations provides that the data should be based on a test period consisting of a base period of 12 months, and an adjustment period of nine months immediately succeeding the base period. The regulation states that the test period:

> [S]hall consist of a base period of 12 consecutive months of most recent available actual experience *adjusted for changes* in revenues and costs *which are known and measurable* with reasonable accuracy

[2] The initial decision was issued on April 15, 1982, 19 FERC ¶ 63,008.

> *at the time of filing*, and which will become effective within nine months after the [base period.] [Emphasis added].

Under this scheme, adjustments are to be made to the base period data. The adjustments are to reflect changes effective within nine months after the base period which are known and measurable. However, there is a point in time at which the adjustments are theoretically to be applied. This point in time is the date the rate increase is filed.

The reason for having such a point of time is to deal with the problem of a "moving target." That is, as time passes after the filing, new data are constantly becoming available which could form the basis for revised estimates. The orderly and efficient administration of rate regulation requires some limit on the use of new data. A new rate proceeding can be instituted if necessary to compensate for changes occurring subsequent to the adjustment cut-off.

In this case, the filing date was April 28, 1980. The adjustment period ended on September 30, 1980. The judge used actual data (referred to as "actuals") for the *entire* nine month adjustment period. The Company argues that the judge erred in using data which were available after the filing date.

The judge justified his decision to use "actuals" (I.D., pp. 7-10), as follows:

(1) The FPC, in an analogous 1959 case, affirmed the use of actuals. *Michigan Wisconsin Pipe Line Co.*, 21 FPC 306. In that decision, the Commission stressed the discretionary nature of such a determination. The Commission stated:

> [A] hearing officer should receive any and all evidence which will enable this regulatory agency to arrive at the most nearly reasonable result. This evidence should be confined to the test year as originally cast in the rate filing but if it appears that

> the ends of justice will be served by the consideration of dependable data which would affect the rate level materially and which relates to a period of time beyond the filed test year, that data should be available to the Commission for its consideration. It is realized, of course, that the eleventh hour receipt of evidence which goes beyond the original test year on which the Staff and interveners have relied in their study of a case and preparation therefore is disruptive and may, in some instances, render useless hours of effort previously expended. * * * In determining whether to receive and consider evidence relating to events occurring beyond the filed test period, the hearing officer must weigh all of the advantages and disadvantages, the benefits and the detriments which would arise from either course of action. [*Id.*, 316.]

The judge also referenced FPC Opinion No. 703 (1974), in which the use of actuals was accepted.[3]

(2) The decision in *Indiana Municipal Electric Association* v. *FERC*, 629 F.2d 480 (7th Cir. 1980), relied on by the Company in challenging the use of actuals, does not prohibit their use.[4]

(3) The Company has not alleged that the use of actuals was the result of delaying tactics of the staff or

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[3] There the Commission's discussion was of a summary nature, with the Commission simply opining that "there is no reason why [the use of actuals] is not acceptable where the data is available." *Consolidated Gas Supply Corp.*, 52 FPC 454, 458.

[4] The judge noted that in the *Indiana Municipal* decision the Court rejected the argument that the Commission was *required* to use actuals if they were available. We note further that *Indiana Municipal* concerned the quite distinct test year scheme provided for under the Federal Power Act (FPA) regulations. Under the FPA regulations, actual would replace future year *estimates*; under the NGA regulations, they would replace changes in costs and revenues *known and measurable* at the time of filing.

intervenors[5]; nor has the Company argued that the actuals are atypical or give distorted results.[6] Finally, the use of actuals in this situation "would be more advantageous to the proper and orderly determination of just and reasonable rates in this case." (I.D. 10.)

The Company argues that the Commission is strictly bound by the requirements of the regulations. In support of this contention the Company cites the D.C. Circuit's recent *Panhandle Eastern* decision,[7] which stated:

> [W]e do not believe the Commission should have authority to play fast and loose with its own regulations. It has become axiomatic that an agency is bound by its own regulations. The fact that a regulation as written does not provide FERC a quick way to reach a desired result does not authorize it to ignore the regulation . . . . [Footnote omitted.]

Discussion

We are of the view that the use of actuals is appropriate in this case. Moreover, we believe that the cases cited by the judge support the discretionary use of actuals. However, neither the initial decision nor the two Commission decisions cited by the judge which have used actuals specifically attempted to reconcile the use of actuals with the Commission's regulations. We believe that further discussions is desirable to that end.

The peculiar situation here is that no party has used a cost-of-service study which conforms to the regulations

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[5] The delay was owing to protracted, and ultimately unsuccessful, settlement negotiations. (I.D. 3-5.)

[6] In addition, the judge suggests that the Company acquiesced in the use of actuals during the hearing. (I.D. 10.) However, we do not believe that this is an accurate reflection of the Company's position. See Arkla's Motion to Quash Subpoenas, filed Feb. 2, 1981.

[7] *Panhandle Eastern Pipe Line Co.* v. *FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 889 (1980).

governing filing requirements. The staff and the City wish to base adjustments on changes known and measurable at the conclusion of the test period, rather than at the time of Arkla's filing. Arkla argues that because these actuals go beyond the adjustment cut-off, they cannot be used. For its part, however, Arkla declined to make adjustments to the base period for known and measurable changes, even though it was aware of such changes as of the date of filing.[8]

The concern of the regulation is to arrive at a just and reasonable rate rooted in base period cost-of-service data, *as adjusted* for the annual effect of changes known and measurable at the time of filing. Clearly, the best way of arriving at such a determination would be to adjust the base period data on the basis of information available at the time of filing.

The Company could have made adjustments to the base period to reflect appropriately changes known and measurable as of the date of filing. If it had done so, its claimed test period costs could have served as the point of departure for establishing just and reasonable rates. The Company failed to do so, however. The staff, similarly, did not attempt to construct an adjusted test period on the basis of only data available on the date of filing. Instead the staff used actuals for the entire nine-month adjustment period as the basis for its adjustment.

The question we face, as a consequence, is which position, that of the staff or that of the Company, provides the better representation of the changes which were

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[8] The most striking illustration of Arkla's position concerns products extraction plant revenues. On January 1, 1980, the day after the conclusion of the base period, natural gas liquids were deregulated. Yet Arkla did not make any adjustment to reflect the likely resultant increase in revenues, even though such an increase was known and measurable long before the adjustment cut-off date. (I.D. 29.)

known and measurable at the time of filing, and thus serves best as a basis for determining rates for the period commencing November 1, 1980.

The staff's actuals were relied on by the judge in dealing with three issues.[9] The judge found as to these issues that the adjustments based on actuals were representative of test period changes, and not abnormal. He found further that Arkla made no claim to the contrary. The record indicates, moreover, that there were significant changes during the nine-month adjustment period which were pertinent to these issues, and which justified making adjustments.

We therefore conclude that the staff's position is a better representation of Arkla's cost-of-service and jurisdictional revenue requirements for the purpose of establishing rates in this proceeding. And it is in accord with the concern of the regulation, as described above. For this reason we affirm the initial decision's adjustments to the base period data.

We emphasize that it is because of the facts present in this case that the discretionary use of the post-filing date actuals is prescribed here. In a properly presented case, in which base period data were adjusted for changes known and measurable at the time of filing, the use of such adjusted test-period data would generally be more appropriate. This does not mean, however, that the Commission would discourage the submission of actuals for a "locked-in period" as has often been done in the past. For in any proceeding in these matters, we reiterate, the Commisson's essental concern is that the applicant's rates be premised upon a representative and credible cost-of-service determination.

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[9] These were products extraction plant revenues (I.D. 29); plant in rate base (I.D., pp. 30-35); and delivery volumes, for rate design and allocation purposes (I.D., pp. 63-64).

The Commission orders:

(A) The initial decision issued in this proceeding on April 15, 1982, is affirmed and adopted as modified herein. Any exceptions to the initial decision not granted herein are denied.

(B) Within 75 days of the date of issuance of this order, the Arkansas-Louisiana Gas Company shall file a revised cost-of-service and any necessary amendments to its rate schedules or tariffs, in lieu of those at issue herein, in accordance with the findings and conclusions of this decision and with the Commission's Rules and Regulations. However, if applications for rehearing are pending at the close of the 75 day period, the above-mentioned filing shall be made 30 days from the date the applications for rehearing are disposed of by the Commission.

(C) Within 30 days of the Commission's approval of the revised tariff sheets, Arkansas-Louisiana shall refund to its customers, with interest, any amounts collected in excess of those allowed herein.

By the Commission.

[SEAL]

/s/ Kenneth F. Plumb
KENNETH F. PLUMB,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Georgiana Sheldon, Acting Chairman;
J. David Hughes, A. G. Sousa and Oliver G. Richard III.

Docket No. RP80-91-002
and RP80-93-002

ARKANSAS LOUISIANA GAS COMPANY
(a Division or Arkla, Inc.)

OPINION NO. 160-A

ORDER DENYING REHEARING

(Issued April 6, 1983)

On March 7, 1983, the Arkansas Louisiana Gas Company (Arkla) filed a request for rehearing of Opinion No. 160, 22 FERC ¶ 61,125 (February 4, 1983). In Opinion No. 160 the Commission affirmed and modified an initial decision, and established just and reasonable rates for Arkla's sales of gas within the Commission's jurisdiction to certain customers.

Arkla's petition for rehearing argues that the Commission erred in several respects in its opinion. For the most part, Arkla's petition repeats arguments which were disposed of by Opinion No. 160. The petition for rehearing raises no maters warranting departure from our prior decision. However, one point that Arkla's petition raises merits mention.

The Company's petition for rehearing reiterates the argument which the judge rejected that it can not be required to make refunds below the last Base Tariff

Rate[1] for the period prior to the Commission's final determination in this proceeding.[2] We note that the Commission considered this question after the initial decision was issued. The Commission's decision, *Florida Gas Co.*, 19 FERC ¶ 61,293 (1982), supports the judge's conclusion.[3]

The Commission Orders:

(A) Arkla's March 7, 1983, petition for rehearing is denied.

(B) Arkla's Motion for Oral Argument, filed the same day, is also denied.

By the Commission.

[SEAL]

/s/ Kenneth F. Plumb
KENNETH F. PLUMB,
Secretary.

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[1] See Opinion No. 71-A, 19 FERC ¶ 61,012.

[2] In its petition the Company argues that the judge cited the regulation erroneously. The regulation provides that the refund obligation:

> shall be limited to the amount collected in excess of the old Base Tariff Rate, and rate reductions, if any, below the old Base Tariff Rate shall be prospective *from the date of the Commission's final order* determining a new Base Tariff Rate. [Emphasis added.]

The judge incorrectly quoted the regulation as providing that refund liability is prospective "from the date on which a cost of [service] study is filed." This error does not affect the judge's reasoning, however, This is because the judge concluded that the reductions were not below the old Base Tariff Rate.

[3] The Commission stated that the applicable regulations "are designed to incorporate a balancing of the pipeline's *total jurisdictional costs and revenues* at the time a 36-month filing is made." [Emphasis added.]

19 F.E.R.C. (CCH) ¶ 63,008

ARKANSAS-LOUISIANA GAS COMPANY

Docket Nos. RP80-91-000 and RP80-93-000

Initial Decision of the Administrative Law Judge

(Issued April 15, 1982)

George P. Lewnes,
Presiding Administrative Law Judge

* * * *

G. Refund Issue

The issue presented here is whether, under the facts of this case, Arkla's refund liability is limited only by its prior "old" Base Tariff Rate rather than, by that rate as adjusted for interim purchased gas adjustment (PGA) clause increases. Arkla argues for the latter approach, whereas Cities and the Staff support the former.

At the prehearing conference of February 10, 1981, Judge Charno ruled that, based on the Commission's regulations and orders, Arkla's refund liability is limited only by the prior Base Tariff Rate, rather than by that rate as adjusted for subsequent purchased gas cost increases. (Tr. 104) On April 1, 1981, Judge Charno certified his ruling to the Commission, together with the then-proposed settlement submitted by Arkla and opposed by the Staff. In its order of July 17, 1981, rejecting the offer of settlement and remanding this proceeding for full evidentiary hearings, the Commission stated:

> We do not now decide the refund issue, but we are unwilling to accept, for purposes of settlement, Arkla's interpretation of the Commission's refund authority. Furthermore, there is no doubt that the Commission has authority to reduce Arkla's rates

> prospectively below the pre-filing level if that is found to be necessary.

(Mimeo at 2)

At the prehearing conference of July 22, 1981, the undersigned stated that, because of the importance of this issue, the parties would be permitted to reargue it *de novo* on brief. Upon review of those arguments, thoroughly presented on brief by all parties, the Presiding Judge Charno's prior ruling on this issue. It is indelibly inscribed in the Commission's published pronouncements that PGA procedures were not implemented by the Commission as a means by which jurisdictional pipelines could avoid the full measure of regulatory scrutiny of their rates mandated by the Natural Gas Act.

Until 1972, a natural gas pipeline company was required to make a rate increase filing under Section 4 of the Act in order to obtain a rate increase that reflected changes in purchased gas costs. In Order No. 452, the Commission authorized pipelines to include in their tariffs PGA clauses that would provide the basis for automatic rate adjustments to reflect increases in the unit cost of purchased gas. (47 FPC 1049) In doing so, the Commission addressed the administrative problems involved in requiring a full scale rate case each time a rate increase became necessary due to increased supplier costs:

> It is desireable to curb the frequency of general rate increase applications because of resulting administrative delays in the final determination of rates for all companies. The inclusion of a PGA clause in pipeline companies' tariffs would permit pipeline companies to protect themselves against supplier rates increases without frequent general rate increase applications, would make purchased gas adjustments available to all pipeline companies, and would make adjustments available for more than a temporary period of time. . . . Also, our action

> herein should help prevent a backlog of "pancaked" rate filings which cause prolonged delays in the final determination of proper rate levels and frustrate the administrative process.

(*Id.* at 1050)

While recognizing the benefits accruing to the pipelines from this new regulatory approach, the Commission was also mindful of its obligations to the ultimate consumers:

> The ratepayer is protected under our new rule since it requires companies to automatically reduce rates to reflect purchased gas decreases and provides for periodic review and investigation into the companies' total cost of service.

(*Id.* at 1050-51)

Order No. 452 amended portions of Section 154.38 of the Commission's regulations relating to PGA filings. These regulations provide that, before a pipeline company can have a PGA clause in its filed tariff, it must show that its total costs and revenues are in balance. To maintain its PGA clause, and provide a basis for detection of possible cost-revenue imbalances, the regulations further require that pipeline companies with a PGA clause must file a cost of service study and new base tariff rates at the end of thirty-six months after establishment of the base rates. When that filing is made, the company agrees that its filing "will automatically be subject to refund." *See* 18 CFR § 154.38(d)(4)(vi)(a)(1981).

It is clear from Order No. 452 that the Commission's intention in creating Section 154.38(d) was to avoid adding to an ever-growing backlog of rate cases by allowing automatic purchased gas adjustments. These adjustments were intended to be conditioned on the results of a review of a company's entire cost of service every

thirty-six months in a full-fledged Section 4(e) rate case. The intent was never to permanently reduce the degree of scrutiny to which these filings were to be subjected. There was to be an assessment of accountability, *i.e.*, refunds, at the end of the thirty-six months.

So as to dissipate any remaining confusion as to the applicable refund floor under these PGA regulations, the Commission issued Order No. 452-A:

> It should be noted that *the refund floor is the old Base Tariff Rate and is not the last effective rate* (*i.e.*, the last Rate After Current Adjustment). This refund floor minimizes the possibility that companies will be able to retain revenues in excess of their cost of service and permits the extent of potential liability for refunds to be known. *The potential refund liability is prospective from the date on which a cost of study is filed, i.e.*, after termination of the 36-month period. [Emphasis supplied]

(47 FPC 1510, 1511 (1972))

In summary, pipeline companies making PGA filings were placed on notice that acceptance of such filings was not meant to be a final approval of the rate increases they contain. Rather, PGA clauses were and are a divergence from the usual ratemaking procedures, and are allowed only as a stop gap procedures, and are allowed only as a stop gap measure to alleviate administrative backlog and to protect pipelines against supplier rate increases without frequent general rate increase applications." A rate case proceeding examines all of the circumstances involved in a company's cost of service to determine whether the rate requested is just and reasonable. This ensures a balance between any increases and decreases which have occurred in a company's total costs. A PGA increase filing considers only one isolated element of a gas company's expenses, without regard to whether the unit cost of rendering service has increased.

Arkla's filing, in this proceeding, included revised tariff sheets restating Arkla's Base Tariff Rate to establish a new Base Tariff Rate, pursuant to the requirements of Section 154.38(d)(4)(vi) of the Commission's regulations. *See* p. 3 herein. Its thirty-six month date of accountability has arrived and its refund obligation is limited only by its prior old Base Tariff Rate.

Ultimate Findings and Conclusion

Upon consideration of the evidentiary record and all of the pleadings in this proceeding, it is further found and concluded that:

(1) Arkansas Louisiana Gas Company is a natural gas company within the meaning of the Natural Gas Act.

(2) The proposed increase in rates and charges and the proposed changes in tariff, filed in Docket Nos. RP80-91 and RP80-93, involve sales for resale in interstate commerce and are subject to the jurisdiction of the Federal Energy Regulatory Commission.

(3) The changes in rates and charges and the tariff provisions affecting such rates and charges, proposed herein by Arkansas Louisiana, have not been shown to be just and reasonable; they are, therefore, found to be excessive.

(4) The just and reasonable rates and charges and the tariff provisions affecting such rates and charges are and will be those which are in conformity with the views, findings and conclusions set forth in the decision herein.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on exceptions or on its own motion, that:

Within thirty (30) days from the issuance of this decision, Arkansas Louisiana shall file revised rates and revised tariff sheets in accordance with the findings and conclusions of this decision; *and, further,* Arkansas Louisiana shall refund to its customers all amounts collected in excess of those rates which would have been payable under the revised rates and charges ordered above, together with interest from the data of payment to the date of refund, at the interest rate prescribed by the Commission's regulations. The floors, for purposes of calculating refunds, shall be the old Base Tariff Rates under the G-2 and X-26 rate schedules, without adjustment for subsequent PGA increases.

/s/ George P. Lewnes
GEORGE P. LEWNES
Presiding Administrative
Law Judge

Natural Gas Act

Rates and Charges; Schedules; Suspension of New Rates

Sec. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except

after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the

Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

Fixing Rate and Charges; Determination of Cost of Production or Transportation

Sec. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission

may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

* * * *

18 C.F.R. § 154.38(d)(4) (1983)

* * * *

(4) A natural gas pipeline company may flow through changes in its cost of purchased gas[1] pursuant to a purchased gas adjustment clause (PGA clause). The proposed clause must be filed with the Commission and shall not be effective until approved by the Commission. No request for approval of a PGA clause will be considered unless the proposed clause meets the terms and conditions specified in paragraphs (d)(4)(i) through (viii) of this section. Any PGA clause approved by the Commission is subject to the conditions in paragraph (d)(4)(ix) of this section.

The first PGA rate adjustment to become effective on or after January 1, 1979, may reflect the calculation specified in clause (x).

(i) The proposed PGA clause shall be accompanied by a cost study in conformity with the requirements of § 154.63. This study must be based upon actual costs for the 12 months of most recently available actual experience and may include annualization for changes which actually occurred in the 12 month period. If a cost-of-service study having a test period ending less than

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[1] For the purpose of this paragraph, purchased gas costs represent the cost of wellhead purchases, field line purchases, plant outlet purchases, transmission line purchases, and pipeline or affiliate production that qualifies for and is being afforded an area of nationwide rate under § 2.66 of this chapter, a maximum lawful price under § 270.203 of this chapter, or a rate specified under § 154.42(b)(1). Nonconcurrent exchange transactions may be reflected as a cost of purchased gas. If a company has underground storage, the cost of purchased gas included in Accounts 800, 801, 802, and 803, and where applicable; Account 806, shall be debited or credited to reflect the net injections or withdrawals from underground storage. This adjustment shall be prorated between pipeline and producer supply. New pipeline supplies (contractual daily delivery obligations) and liquified natural gas, synthetic natural gas, gas from coal gasification, and pipeline production when priced on a cost of service basis pursuant to Commission authorization shall not be reflected in a PGA clause without prior Commission approval.

12 months prior to the date of submission of the proposed PGA clause is on file in another docket, that cost study may be utilized in lieu of filing a cost study with the proposed PGA clause.

(ii) The method(s) of determining changes in cost of gas purchased from producer and pipeline suppliers shall be separately established. Any purchase of deregulated high-cost gas from affiliated producers shall be so identified in the schedules of gas costs. Increases in cost of gas purchased from small producers shall be shown separately, and the provisions of Order No. 428 shall apply to these increases. Producer rate changes shall be applied to the commodity component of the existing rates of a pipeline company's two-part rates and to the volumetric rates of a pipeline company's one-part rates. Pipeline supplier rate changes shall be applied "as billed" to a pipeline company's two-part rates and shall be applied to a pipeline company's volumetric rates in the manner which maintains the pipeline company's existing one-part rate design.

(iii) The purchased gas cost adjustment shall be reflected in the company's rates only when it represents a dollar amount equal to at least 1 mill ($0.001) per Mcf of annual jurisdictional sales. This limitation is not applicable to the unrecovered purchased gas costs for which provision is made in paragraph (d)(4)(iv) of this section.

(iv)(*a*) Rate changes which reflect both the projected cost of purchased gas and a revised surcharge to clear the amounts accrued in the deferred account for both producer and pipeline suppliers shall be computed and filed not more frequently than semi-annually. Pipeline companies may reflect in their rates such changes as are permitted to producers of natural gas under the Natural Gas Policy Act of 1978. Pipeline companies with semi-annual adjustment dates may not reflect in their purchased gas pattern any supply which is not attached to its system as of the effective date of the proposed rate change.

JANUARY 1, AND JULY 1

Alabama-Tennessee Natural Gas Company
East Tennessee Natural Gas Company
Chattanooga Gas Company, a Division of
Jupiter Industries, Inc.
Granite State Gas Transmission, Inc.
Midwestern Gas Transmission Company
Sea Robin Pipeline Company
Southern Natural Gas Company
South Georgia Natural Gas Company
Tennessee Gas Pipeline Company,
a Division of Tenneco, Inc.
Tennessee Natural Gas Lines, Inc.
United Gas Pipe Line Company
Distrigas of Massachusetts Corporation
Gas Gathering Corporation

FEBRUARY 1, AND AUGUST 1

Lawrenceburg Gas Transmission Corporation
Mid Louisiana Gas Company
National Fuel Gas Supply Corporation
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation
Utah Gas Service Company

MARCH 1, AND SEPTEMBER 1

Algonquin Gas Transmission Company
Columbia Gas Transmission Corporation
Consolidated Gas Supply Corporation
Eastern Shore Natural Gas Company
Mississippi River Transmission Corporation
Natural Gas Pipeline Company of America
North Penn Gas Company
Panhandle Eastern Pipe Line Company
Transcontinental Gas Pipe Line Corporation
Trunkline Gas Company

APRIL 1, AND OCTOBER 1

Arkansas Louisiana Gas Company
El Paso Natural Gas Company
Florida Gas Transmission Company
Mountain Fuel Supply Company
Northwest Pipeline Corporation
Oklahoma Natural Gas Gathering Corporation
Pacific Interstate Transmission Company
Raton Natural Gas Company
Southwest Gas Corporation
Transwestern Pipeline Company

APRIL 23, AND OCTOBER 23

Cities Service Gas Company
Commercial Pipeline Company, Inc.

MAY 1, AND NOVEMBER 1

Kentucky-West Virginia Gas Company
McCulloch Interstate Gas Company
Western Gas Interstate Company
Michigan Wisconsin Pipe Line Company
Montana-Dakota Utilities Company
Valley Gas Transmission, Inc.
Great Lakes Gas Transmission Company

OCTOBER 1

Colorado Interstate Gas Company
Northern Natural Gas Company (Peoples Division)

NOVEMBER 1

Inter-City Minnesota Pipelines Ltd., Inc.

JUNE 1, AND DECEMBER 1

Louisiana-Nevada Transit Company
Mountain Fuel Resources, Inc.
South Texas Natural Gas Gathering Company
Western Transmission Corporation
Texas Gas Pipe Line Corporation

DECEMBER 1

Kansas-Nebraska Natural Gas Company

DECEMBER 27

Northern Natural Gas Company

(*b*) To assure recovery of all purchased gas costs, the Commission has prescribed deferred purchased gas cost accounts. For Class A and B natural gas companies, the deferred account is "Account 191, Unrecovered purchased gas costs," 18 CFR Part 201, Balance Sheet Accounts, 191 and is used in conjunction with "Account 805.1, Purchased gas cost adjustments," 18 CFR Part 201, Balance Sheet Accounts, 805.1. For Class C and D Natural gas companies, the deferred account is "Account 191, Unrecovered purchased gas costs," 18 CFR Part 204, Balance Sheet Accounts, 191 and is used in conjunction with "Account 731.1, purchased gas cost Adjustments," 18 CFR Part 201, Balance Sheet Accounts, 731.1. Pipelines using deferred accounting procedures shall be subject to the provisions of these accounts. In order to qualify for carrying charges, the company is required to adopt the principles of interperiod income tax allocation in connection with the balances recorded in the unrecovered purchased gas cost account.

(*c*) Carrying charges shall be computed based on the ending balances in Account 191. The rate for computation of carrying charges shall be the current rate of interest on pipeline refunds set forth in § 154.67(d) (2) (iii) (A) with interest compounded in the manner set forth in § 154.67(d) (2) (iii) (B). Carrying charges shall be debited to Account 191 if the ending balance in Account 191 for the month is positive and shall be credited to Account 191 if the ending balance is negative. The carrying charges shall be computed monthly on the net balances in Account No. 191 and the related amounts in

Account Nos. 283 or 190, as appropriate, as of the end of the immediately preceding month.

(*d*) After the initial 6-month period following the effectiveness of the PGA clause and after the company has chosen to maintain an unrecovered purchase gas cost account (Account No. 191) the company shall adjust its rate(s), either positively or negatively, to include a surcharge to recover or return the balance which has accumulated in the unrecovered purchase gas cost account (Account No. 191) in the preceding 6-month period. This procedure will be followed in each succeeding 6-month period.

(v) The company shall file with the Commission and post pursuant to § 154.16 at least 30 days prior to the date on which any change(s) in its existing rates is to become effective, a single tariff sheet, entitled Original PGA-1, which contains the information in the margins as set out and required in § 154.33(d) and which shows the following:

NOTICE OF PURCHASED GAS COST ADJUSTMENT RE CHANGE AT

Rate schedule	Base tariff rate [2]	Current adjustment	Cumulative adjustment	Rate after current adjustment

[2] The base tariff rate is the effective rate on file with the Commission excluding adjustments effected pursuant to a PGA clause.

Simultaneously with the filing of the above described tariff sheet, the company shall furnish the Commission, jurisdictional customers, and interested state commissions a report containing detailed computations which clearly show the derivation of the Current Adjustment to be

applied to its existing rates. Exhibit A[3] hereto details the information which is necessary for the Commission to verify the accuracy of the proposed adjustment. In the event the material submitted is deficient, the company will be notified of the deficiencies. No filing date will be assigned until the deficiencies are eliminated.

(vi) (*a*) Upon the expiration of 36 months after the effective date of the PGA clause, the company shall file a tariff sheet(s) restating its rates to establish a new Base Tariff Rate. The Company shall state its agreement that this filing will automatically be subject to refund concurrently with the filing at the end of 36 months of the tariff sheets establishing a new Base Tariff Rate until an agreement is reached or a Commission determination is made. With this tariff sheet(s) the company shall file a study in the form and with the content prescribed by § 154.38 of the Regulations, except Statements O and P, to support the new Base Tariff Rate. (If the Company has a section 5(a) case pending a final order or has made a section 4(e) filing for which the proposed rates would not become effective before termination of the 36-month period, a study from that proceeding may be utilized.) This study shall be based upon actual costs for the twelve months of most recently available experience, provided that the 12-month period used ends not more than 4 months prior to the expiration of the 36-month period. Annualization for changes which actually occurred in the 12 months will be permitted. This study shall be served on the company's jurisdictional customers and interested State commissions concurrently with the Company's filing with the Commission.

(*b*) If a section 4(e) case is filed before the expiration of the 36-month period, a new 36-month period will start running when the proposed rates go into effect. Rates determined by the Commission in a section 4(e) or

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[3] Filed as a part of the original document.

a 5(a) proceeding or rates in a settlement agreement approved by the Commission shall establish the new Base Tariff Rate when they become effective pursuant to a final order, and a new 36-month period will start running.

(*c*) If either as a result of conferences among the company, its jurisdictional customers, interested State commissions, and the Commission staff, or as a result of Commission determination after hearing, it is found, based on the aforementioned study, that the jurisdictional cost of service is less than the jurisdictional revenues collected for the same 12-month period, as adjusted, the company shall restate its Base Tariff Rate, shall file with the Commission a revised tariff sheet(s) reflecting a reduction in its jurisdictional rates by an amount equal to the excess revenues agreed upon or determined, and shall refund to its jurisdictional customers any excess amounts collected subject to refund to the date of billing under the revised tariff sheets, with interest to that date. This refund obligation shall be limited to the amount collected in excess of the old Base Tariff Rate, and rate reductions, if any, below the old Base Tariff Rate shall be prospective from the date of the Commission's final order determining a new Base Tariff Rate.

(vii) The jurisdictional portion of all refunds received from suppliers (including interest received) applicable to purchases after a PGA clause becomes effective shall be flowed through to the company's jurisdictional customers. If the company utilizes deferred accounting for unrecovered purchased gas costs, the jurisdictional portion of all refunds received (including interest received) shall be credited to the unrecovered purchased gas cost account. If the company does not utilize deferred accounting and holds supplier refunds more than 30 days, the jurisdictional portion of supplier refunds (including interest received) applicable to purchases after a PGA clause becomes effective shall be flowed through to the

company's jurisdictional customers with interest. Any requirement for the serving and filing of reports, showing details of the computations of any such refunds, shall be either as agreed in settlement discussions held among the company, jurisdictional customers, interested State commissions, other interested parties, and the Commission staff, or as prescribed by Commission order.

(viii) Pipelines must file tariff sheets pursuant to this part to conform their existing PGA clauses on or before December 1, 1978, which shall become effective as of January 1, 1979. After January 1, 1979, a pipeline shall not be permitted to track changes in purchased gas costs under a PGA clause unless the PGA clause in effect at that time conforms to the rule promulgated in Order No. 13.

(ix) *Election of a PGA clause.* A natural gas pipeline company shall elect once every three years whether to recover all changes in purchased gas costs either through general rate filings made under § 154.63 or through filings made under a PGA clause prescribed in this paragraph.

(*a*) *Procedure for election.* For purposes of this paragraph, "election period" means a three year calendar period commencing on January 1, of every third year. The first election period commences on January 1, 1979. The election for an election period must be made on or before the first day of the December preceding the new election period and is binding for the entire election. Any company which has a PGA clause in its tariff on December 1, 1978, shall be considered to have elected to recover its changes in purchased gas cost exclusively through the PGA clause. However, such a company with a PGA clause in its tariff on December 1, 1978 which chooses not to use the PGA clause must notify the Commission by December 1, 1978 that it has elected not to recover any of its changes in purchased gas cost under

a PGA clause. It shall file revised tariffs sheets eliminating the PGA clause from its tariff, by December 15, 1978 to become effective January 1, 1979. Waiver of the notice requirements in § 154.22 is hereby granted to permit such conforming tariff sheets to become effective January 1, 1979. Any company which elects the PGA clause option pursuant to this paragraph may terminate its PGA clause effective as of the next election period by filing revised tariff sheets eliminating the PGA clause from its tariff. Such tariff sheets must be filed on or before December 1, preceding a new election period to become effective on the first January 1 of the new election period. If a company does not make such a filing, it shall be considered to have elected to renew its PGA clause option for the new election period. A company which has chosen the non-PGA option for an election period may file revised tariff sheets implementing the PGA clause option for the next election period. Such tariff sheets must be filed on or before the December 1 preceding a new election period to make the PGA clause effective on the first January 1 of that election period.

(*b*) *PGA clause option.* Any company which has elected the PGA clause option for the first election period, beginning on January 1, 1979, may not include any changes in purchased gas cost in a general section 4 rate filing made under § 154.63 and which is filed in December 1978. Thereafter, during an election period for which a company has elected the PGA option, it shall file for changes in its purchased gas cost exclusively through its PGA clause. The company may not file tariff sheets eliminating its PGA clause from its effective tariff during the election period and may not include any changes in its purchased gas cost in a general section 4 rate filing made under § 154.63, during the election period for which the PGA clause is in effect: *Provided, however,* That a company may request the Commission for a waiver of the election and if granted may include changes in pur-

chased gas cost in a general section 4 rate filing made under § 154.63.

To receive a waiver, the company must demonstrate that (*1*) it is unable to arrange for financing of the balances being carried in the deferred account (Account No. 191), or (*2*) is not able to earn its overall rate of return last allowed by the Commission because of the magnitude of the balances in the deferred account (Account No. 191) and a significant difference between the costs of financing the deferred amounts and the carrying charges allowed under paragraph (d) (4) (iv) (*c*) of this section.

(*c*) *Non-PGA option.* During an election period for which the company has elected the non-PGA option, a company shall file for changes in purchased gas cost exclusively in a general section 4 rate filing made under § 154.63. The company may not file tariff sheets to include a PGA clause in its effective tariff during that election period.

(x) *One-time passthrough of certain estimated NGPA Costs.* (*a*) *General Rule.* Notwithstanding the provisions of clause (iv) (*d*) of paragraph (d) (4), any natural gas pipeline company with a PGA clause in effect on January 1, 1979, may estimate its changes in purchased gas cost directly attributable to the Natural Gas Policy Act of 1978 (NGPA) up to and including the month preceding the effective date of its first PGA tariff adjustment effective on or after January 1, 1979, provided however, for those months for which the pipeline has actual NGPA costs reflected in its deferred account, the actual amounts must be used in calculating the surcharge. The amount estimated may be added to the actual amounts reflected in the pipeline's deferred account (Account 191) for purposes of calculating the PGA surcharge included in the pipeline's first PGA rate adjustment to be effective on or after January 1, 1979.

(b) Option for pipelines with a PGA rate adjustment effective on January 1, 1979. Those pipelines with PGA rate adjustments to become effective on January 1, 1979 may elect to include the adjustment for NGPA costs prescribed in clause (x)(*a*) either (i) in their PGA rate adjustment to become effective on January 1, 1979, or (ii) in their first PGA rate adjustment filed on or after January 1, 1979. Those pipelines choosing (i) must file amended PGA rate sheets which reflect the adjustment allowed in clause (x)(*a*) no later than December 15, 1978; the notice requirements of § 154.138(d)(4)(v) and the notice provisions in the pipeline's PGA clause tariff provisions are hereby waived for such PGA tariff filings made during December 1978.